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IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7080 OF 2006

Rashtriya Shikshan Sangh and Anr ... Petitioners

Vs.

State of Maharashtra & Ors. ... Respondents.

Mr. S. S. Pakale, Advoate for the petitioners.

Mr. V.A. Gangal, Spl. Counsel with Ms. P.S. Cardozo, AGP for respondent Nos. 1 & 4.

Mr. Machhindra Patil, advocate for respondent No.5 & 6.

CORAM: F.I. REBELLO,
AND
R. V. MORE, JJ.

DATE : JANUARY 24, 2007.

P.C.:

. Rule. Heard forthwith.

2. The petitioners approached this court to impugn the order dated 16th November 2006 passed by the Secretary Social Justice Department, appointing Administrators to the schools run by the respondent no.1. Earlier, pursuant to order passed in PIL No. 59 of 2003 on 3rd September 2003 at the instance of Natha Annasaheb Natha Khot

and others, a learned Bench of this Court was pleased to set aside an order passed in appeal which had the effect of setting aside the order appointing an administrator by the Special District Welfare Officer, Sangli. At the same time, this Court noted that action could not have been taken to appoint administrator under Rule 9 of Bombay Primary Education Rules 1949 and directed the maintainanace of status-quo. Subsequent to that, an inquiry was conducted by the Joint Director of Education. The effect of the inquiry was that nothing substantially adverse was found against the petitioners. An application came to be filed in this Court in the PIL petition for recalling the order of status-quo passed on 3rd September 2003. That was rejected. It appears that thereafter an order came to be passed on 9th August 2006 and Administrator came to be appointed. That was challenged by the petitioners herein by Writ Petition No. 6347 of 2006. By order dated 3rd October 2006 a statement was made before this court on behalf of the State of Maharashtra that respondents have withdrawn the order dated 9th August 2006. This Court, however, directed that the Administrator who had been

appointed, was for 3 schools, will not take any policy decision, will not appoint any employee or terminate services of any of the employees in the 3 schools and as far as financial matter is concerned, same is restricted to only day to day expenditure. It was further made clear that the Court has not expressed opinion on any point raised, and all the points are kept open for consideration. The matter thereafter went back before the Appellate Authority. One point canvassed on behalf of the petitioner was that no appeal shall lie against the order passed by the Director. This contention was rejected on the ground that the directions has been given that the appeal was heard. The other aspect of the matter is that the representation of the Joint Director was not at all taken into consideration while disposing the appeal. The appeal was allowed and Administrators came to be appointed for all the three schools, which is the subject matter of the present petition. Aggrieved by the same, petitioners have preferred the present petition.

3. At the threshold on behalf of the petitioner, the learned counsel points out that

considering Section 3 of the Maharashtra Education Institutions (Management) Act 1976, if an order is passed to take over the management of an institution by virtue of Section 3(4), the Management can prefer an appeal to the State Government. In the instant case, it is submitted that as no Administrator was appointed at the instance of Mr. Annasaheb Natha Khot and others, an appeal was not maintainable and the order passed is without jurisdiction. the application, leave granted.

. On behalf of contesting respondents, it is submitted that there is power to prefer an appeal and consequently, cannot be said that the order is without jurisdiction.

4. We have heard the learned counsels. For the purpose of deciding the controversy, we may gainfully reproduce Section 3(1) and 3(4) of the Maharashtra Educational Institutions (Management) Act, 1976 as under.

> **3.Taking over Management of Education Institution:** (1) Whenever the Director is satisfied that the

Management of any educational institution has neglected to perform any of the duties imposed on it by or under any law for the time being in force, or the memorandum of association, or any instrument (including any rules, regulations or by-laws) which regulates its administration or is being managed in a manner detrimental to public interest, and that it is expedient in the public interest, and in particular, in the interest of education imparted in such institution to take over the management of such institution in so far as its activity relates to imparting education, he may, notwithstanding anything contained in any law for the time being in force, after giving the management of such institution, a reasonable opportunity of showing cause against the proposed action, by an order take over the management of such institution in so

far as its activity relates to imparting education specified in the order for a limited period not exceeding three years.

(4) Any Management, which is aggrieved by the order of a Director under section (1), may make an appeal to the State Government within a period of 15 days from the date of receipt of the order of the Director. The State Government may, after considering the representation made by the Management and the order of the Director pass such orders, including an order for the restoration of the Management or for the reduction of the period during which the management of such institution shall remain vested in the Administrator as it may deem fit.

. Under section 4, there is power to appoint Administrator, once an order has been passed to take over the Management of an Institution. In

other words, the order in section 4 is consequential to an order passed under section 3(1) of the Act.

5. The power to take over Management power of appointing Administrator is pursuant to the powers conferred under the Act. This is not a power of the State Act, but the state has not only the power is conferred by statute and consequentially can be exercised only in the manner provided by the statute. The Act has restricted the power of appeal in the Management alone. As admittedly, they would be the aggrieved parties. No independent right has been conferred on the complainant or any of the person to prefer an appeal. At any rate, no appeal is provided in a case where no order is passed under section 3(1) of the Act to take over Management of the School. In the instant case, there was no such order and consequently the appeal preferred before the State Government by respondent no.5 was not maintainable. This point raised by the petitioners herein before the appellate authority, but the same was rejected on the ground that this Court had directed that the appeal to be heard.

6. We have considered the order of this Court where the matter was sent back for hearing. This Court did not decide any point on merit, but left it open for consideration before the appellate authority. The petitioner raised the objection about non maintainability of the appeal before the appellate authority. That objection was brushed by the appellate authority by holding that this Court by pursuing interim order dated 3rd October 2006 has directed to file the appeal and directed to hear the respondent in the appeal. On perusal of this Court's order, we do not find any such direction. In other words, the appellate authority completely mis directed itself in holding that there is a direction by this Court.

7. The other aspect of the matter is that pursuant to the order of this court, an inquiry was conducted by the Joint Director. The appellate authority while passing the order of appointment of taking over the Management, did not even consider the said report and report and passed order by getting fresh material. In our opinion, such action was totally without jurisdiction. The

Inquiry was conducted, pursuant to an order of this Court. An Inquiry was conducted by high official of respondent no.1, who has been conferred the power, by virtue of Section 3(1) to conduct the Inquiry. The appellate authority, therefore, could not have conducted the inquiry, as the order to take over the management is on the Director being satisfied. The direction under Section 2(e) has been defined to mean the Director of Education, the Director of Technical Education or any Officer authorised by the State Government in this behalf. Nothing is shown before us that the Joint Director was so authorised. We therefore, presume that the Inquiry was conducted by the Joint Director or on instructions by the Director that this was statute Inquiry to enable the Director to consider the material to whatsoever at the satisfaction. At any rate, considering that the power of appeal is only limited to the extent to find out whether Management could be taken over. It was not open to the appellate authority to suo moto, consider the material other than which was considered, to arrive at the satisfaction under section 3(4) of the Act. The action, therefore, in allowing the appeal in appointing administrator, also suffers,

for want of jurisdiction on that count.

8. We may note that it is the private Management that has the right to run the school and administer it, as non compliance of the provisions of the Act, Rules and any other legal statutory direction. The Act has conferred the power on the Directors to intervene if it is expedient to the public interest to interfere and not otherwise. The record before us is slightly disturbing. It indicates that the authorities have been influenced to take the decision. It is the Director on whom the power has been conferred. It is the earnest hope that the Director will exercise that power uninfluenced by any extraneous consideration, except what is laid down in section 3(1) of the Act. Though were allowing the appeal, considering the material before us, in our opinion, it will be a fit case to issue some directions to enable the Director to reconsider the matter bearing in mind the report of the Inquiry Officer, all the material which has come in the appeal, which was preferred. However, considering that order has been set aside, it is the Management who will run the school, subject to whatever actions Director may take. Till such

decision, the Management would not terminate service of any teachers, except by way of suspension, in case of gross misconduct or appoint any teaching or non teaching staff, without the permission of the authorities and in respect of only those posts of urgent necessity of being filled up. Having said so, the following directions.

(i) The order dated 16th October 2006 is quashed and set aside.

(ii) The Director under the provisions of the Act to conduct the inquiry in terms of what we have stated above and to complete the inquiry and pass appropriate orders within 3 months from today.

(iii) The petitioner to run the school, subject to what we have set out in the body of the judgment.

(iv) Rule made absolute accordingly. There shall be no orders as to costs.

[**R. V. MORE, J.]** **[F.I. REBELLO,J.]**